

Message Text

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ACTION AID-31

INFO OCT-01 EA-06 ISO-00 EB-07 L-03 /048 W

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P 180914Z JUL 75

FM AMEMBASSY BANGKOK

TO AMEMBASSY VIENTIANE PRIORITY

SECSTATE WASHDC PRIORITY 7943

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E.O. 11652: N/A

SUBJECT: USAID/LAOS/CONTRACT AID-439-CS-012

REFS: (A) VIENTIANE 4704

(B) STATE 162152

(C) BANGKOK 12873

1. MATERIALS REFERRED TO PARA 5 REF A RECEIVED 15 JULY.
BENNETT LEFT FOR JAPAN WITHOUT OPPORTUNITY TO REVIEW,
BUT WILL DO SO ON RETURN EXPECTED 21 JULY.

2. FOR AID/W: DOES PARA 1 REF B REFLECT AID/W LEGAL
CONCLUSION THAT USAID HAS OBLIGATION TO PAY FOR BAGS
EVEN THOUGH NOT USED IN PERFORMING SERVICES? FILE HERE
REFLECTS THAT CONTRACT IS FOR SERVICES IN REBAGGING
RICE, WHEAT AND OTHER FOODSTUFFS FOR AIR DROPS, WITH
PAYMENT MADE IN FIXED AMOUNTS PER METRIC TON OF
COMMODITY REBAGGED. NO PROVISION FOR REIMBURSEMENT OF
ANY COST. CLAUSE 31 OF GENERAL PROVISIONS AID 1420-42C
(7-72) PROVIDES FOR CONVENIENCE TERMINATION, BUT
LIMITS USG LIABILITY TO PAYMENT AT CONTRACT RATES FOR
SERVICES RENDERED PRIOR TO TERMINATION. NO TERMINATION
NOTICE YET ISSUED (REF C, PARA 3). CHANGE ORDER UNDER
CLAUSE 3 OF GP'S DOES NOT SEEM APPROPRIATE TO THIS
SITUATION. IF CONTRACT ARTICLE III, F READ AS COMMITMENT
BY USG TO ORDER SERVICES AT GIVEN LEVEL, USG FAILURE TO
DO SO MAY GIVE RISE TO CLAIM FOR BREACH. HOWEVER, SINCE
RESEARCH MATERIALS HERE LIMITED, UNCERTAIN AS TO LEGAL
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EFFECT OF ARTICLE III, F AND, IF BREACH INVOLVED, AUTHORITY

TO ADMIT AND MAKE PAYMENT IN SETTLEMENT THEREOF. WILL
APPRECIATE AID/W LEGAL COMMENTS:ADVICE ON FOREGOING.
POSSIBLE SOLUTION MIGHT BE AMENDMENT WITHOUT CONSIDERATION
TO PERMIT REIMBURSEMENT FOR ACTUAL COSTS OF BAGS, IF
AUTHORIZED UNDER SECTION 4 OF E.O. 11223.

3. FOR VIENTIANE: MATERIAL SUBMITTED WITH MANLEY'S
3 JULY LETTER TO CHAMPAN DOES NOT INCLUDE EVIDENCE OF
ACTUAL NET COST TO MANLEY OF PURCHASE AND TRANSPORTATION
OF BAGS. USAID/LAOS WORKING FILES AVAILABLE BANGKOK
INCLUDE ORIGINAL INVOICES FROM VISITH PANICH OF NONG KAI
TO MANLEY COVERING VARIOUS SHIPMENTS OF BAGS; HOWEVER,
THESE DO NOT EVIDENCE PAYMENT AND MAY HAVE BEEN PREPARED
SOLELY TO DOCUMENT CUSTOMS CLEARANCE. NO OTHER MATERIAL
HERE AVAILABLE TO ESTABLISH MANLEY'S NET INVESTMENT IN
INVENTORY OF BAGS. WHILE IN VIEW OF PARA 2 ABOVE
DO NOT WISH ENCOURAGE MANLEY REGARDING POSSIBILITY OF
RELIEF, HE SHOULD KNOW THAT HIS ACTUAL NET COST FOR BAGS
WOULD HAVE TO BE DEMONSTRATED BY BEST DOCUMENTATION
AVAILABLE, AND THAT SUCH DOCUMENTATION IS NOT CONTAINED
IN MATERIALS PREVIOUSLY SUBMITTED. DECON 7/18/76.
WHITEHOUSE

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